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TA PANAMA CONSTITUTION

SUBJECT: JUDICIAL REVIEW OF PLEBISCITE PROVISION OF
PANAMA CONSTITUTION

1. FOLLOWING IS TEXT OF LIBRARY OF CONGRESS MEMORANDUM
MENTIONED IN JORDAN, HANSELL, FELDMAN TELECON TODAY.

PLEBISCITE FOR AMENDMENTS TO PANAMA CANAL TREATIES

PANAMA

THE REQUESTER DESIRES AN OPINION AS TO WHETHER AMENDMENTS
TO THE PANAMA CANAL TREATIES WOULD REQUIRE A NEW PLEBI-
SCITE IN PANAMA.

I. CONSTITUTIONAL PROVISIONS
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THE CONSTITUTION CURRENTLY IN FORCE IN PANAMA WAS ENACTED
AND CAME INTO EFFECT ON OCTOBER 11, 1972 (FOOTNOTE 1:
CONSTITUTION OF PANAMA (ORGANIZATION OF AMERICAN STATES,
WASHINGTON, 1974) (ENGLISH VERSION)). ACCORDING TO
ITS ARTICLE 163 (4) ONE OF THE FUNCTIONS OF THE PRESIDENT

OF THE REPUBLIC IS "TO CONDUCT FOREIGN RELATIONS, TO ACCREDIT AND RECEIVE DIPLOMATIC AND CONSULAR AGENTS, AND TO ENTER INTO INTERNATIONAL TREATIES AND AGREEMENTS, WHICH SHALL BE SUBMITTED TO THE NATIONAL ASSEMBLY FOR CONSIDERATION."

THIS PROVISION, ALSO PRESENT IN ALL PAST PANAMANIAN CONSTITUTIONS, HAS TWO IMPORTANT EXCEPTIONS IN THE CURRENT CONSTITUTION. FIRST, ARTICLE 277 (TRANSITORY) RECOGNIZES BRIGADIER GENERAL OMAR TORRIJOS HERRERA, COMMANDER IN CHIEF OF THE NATIONAL GUARD, AS THE SUPREME LEADER OF THE PANAMANIAN REVOLUTION, AND, IN ORDER TO ENSURE THE FULFILLMENT OF THE OBJECTIVES OF THE REVOLUTIONARY PROCESS, AUTHORIZES HIM TO EXERCISE FOR A 6-YEAR PERIOD A NUMBER OF PUBLIC FUNCTIONS, ONE OF WHICH IS THE DIRECTION OF THE COUNTRY'S FOREIGN RELATIONS.

THE SECOND EXCEPTION RELATED TO TREATIES DEALING WITH THE PANAMA CANAL, WHICH UNDER THE PURVIEW OF ARTICLE 274 (TRANSITORY) OF THE CONSTITUTION, WHICH READS AS FOLLOWS:

ARTICLE 274. TREATIES WHICH MAY BE SIGNED BY THE EXECUTIVE ORGAN WITH RESPECT TO THE PANAMA CANAL, ITS ADJACENT ZONE, AND THE PROTECTION OF THE SAID LIMITED OFFICIAL USE

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CANAL, AND FOR THE CONSTRUCTION OF A NEW CANAL AT SEA LEVEL OR OF A THIRD SET OF LOCKS, SHALL BE SUBMITTED TO A NATIONAL PLEBISCITE.

FINALLY, ARTICLE 141 OF THE CONSTITUTION PROVIDES THAT THE FUNCTIONS OF THE NATIONAL ASSEMBLY OF MUNICIPAL REPRESENTATIVES (ASAMBLEA NACIONAL DE REPRESENTANTES DE CORREGIMIENTOS) INCLUDE ENACTING LAWS FOR SEVERAL PURPOSES, AMONG WHICH IS: "1. TO APPROVE OR REJECT PUBLIC TREATIES SIGNED BY THE EXECUTIVE."

AS FAR AS WE CAN ASCERTAIN NO OTHER CONSTITUTIONAL OR STATUTORY PROVISIONS REGULATE THIS SUBJECT.

II. THE PLEBISCITE OF OCTOBER 23, 1977

LAW 33 OF SEPTEMBER 13, 1977 (FOOTNOTE 2: GACETA OFICIAL, SEPT. 19, 1977.) SUBMITTED THE PANAMA CANAL TREATY AND THE TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL TO A PLEBISCITE IN THE FOLLOWING TERMS:

ACT 1. A PLEBISCITE IS HEREBY CONVENED THAT SHALL TAKE PLACE ON OCTOBER 23, 1977, (WITH THE PURPOSE) THAT THE CITIZENS THROUGH THEIR VOTE SHALL DECIDE WHETHER OR NOT THEY APPROVE THE NEW TREATY OF THE PANAMA CANAL, THE TREATY CONCERNING THE PERMANENT NEUTRALITY OF THE PANAMA CANAL, AND THE RELATED AGREEMENTS AND ANNEXES SIGNED BETWEEN THE GOVERNMENTS OF PANAMA AND THE UNITED STATES OF AMERICA ON WEDNESDAY, SEPTEMBER 7, 1977.

ACCORDING TO ARTICLE 11 OF THE SAME LAW VOTERS HAD TO CHOOSE BETWEEN BALLOTS SAYING "YES" OR "NO" TO THE FOLLOWING PROPOSITION PROVIDED BY ARTICLE 10 OF THE SAME LAW:

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"I AGREE WITH THE NEW TREATY OF THE PANAMA CANAL, THE TREATY CONCERNING THE PERMANENT NEUTRALITY OF THE CANAL AND THE OPERATION OF THE PANAMA CANAL, THE MINUTES AGREED UPON, THE EXCHANGES OF NOTES, MAPS, THE RELATED AGREEMENTS, AND THE ANNEXES SIGNED BETWEEN THE GOVERNMENTS OF PANAMA AND THE UNITED STATES OF AMERICA ON WEDNESDAY, SEPTEMBER 7, 1977."

NEITHER THE TEXT OF THE BALLOT NOR ANY OTHER PROVISIONS OF LAW 33 OF 1977 REFERRED TO FUTURE AMENDMENTS TO THE TREATIES BEING APPROVED BY THE PLEBISCITE OF OCTOBER 23, 1977.

IN THE PLEBISCITE THE CANAL TREATIES WERE APPROVED BY A WIDE MARGIN BY PANAMANIAN VOTERS (FOOTNOTE 3: NEW YORK TIMES, OCT. 25, 1977.). IT APPEARS, THEREFORE, THAT THE REMAINING CONSTITUTIONAL STEP WOULD BE THE ENACTMENT OF THE TREATIES AS A LAW BY THE NATIONAL ASSEMBLY, ACCORDING TO ARTICLE 141 OF THE CONSTITUTION, CITED ABOVE.

III. CONCLUSIONS

THE 1972 PANAMANIAN CONSTITUTION REQUIRES THAT TREATIES SIGNED BY THE EXECUTIVE CONCERNING THE PANAMA CANAL MUST BE SUBMITTED TO A NATIONAL PLEBISCITE FOR THEIR APPROVAL. NEITHER THE CONSTITUTION NOR ANY STATUTORY PROVISION STATES WHETHER OR NOT A PLEBISCITE IS REQUIRED IN THE CASE OF AMENDMENTS TO TREATIES ALREADY APPROVED BY A PLEBISCITE. THEREFORE, THE LAW GOVERNING THE SUBJECT MUST BE INTERPRETED BY RESORTING TO SOURCES OTHER THAN THE STATUTES THEMSELVES.

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THE REQUIREMENTS OF A PLEBISCITE FOR THE APPROVAL OF TREATIES DEALING WITH THE CANAL WAS ESTABLISHED FOR THE FIRST TIME IN THE 1972 PANAMANIAN CONSTITUTION. UNFORTUNATELY, THE MATERIALS AVAILABLE TO THIS LIBRARY DO NOT COVER THE LEGISLATIVE HISTORY OF THIS CONSTITUTION OR PROVIDE ANY OTHER JUDICIAL, ADMINISTRATIVE, OR EVEN MONOGRAPHIC SOURCES RELATED TO THIS PROBLEM, PREVENTING US FROM ISSUING A SUBSTANTIATED OPINION ON THE SUBJECT AT THE PRESENT TIME.

WE CAN NOTE, HOWEVER, SOME OF THE BASIC ELEMENTS THAT MAY BE CONSIDERED, WITHIN THE CONTEXT OF PANAMANIAN LAW, FOR ARRIVING AT A DEFINITE OPINION ON THE SUBJECT:

(1) THE PLEBISCITE OF OCTOBER 23, 1977, AS NOTED IN PART II ABOVE, APPROVED THE TEXT OF THE PANAMA CANAL TREATIES AND RELATED AGREEMENTS AND DOCUMENTS AS SIGNED BY THE GOVERNMENTS OF PANAMA AND THE UNITED STATES ON A SPECIFIC DATE: SEPTEMBER 7, 1977.

(2) THE EVENTUAL AMENDMENTS TO THE TREATIES COULD RANGE FROM MERE FORMALITIES TO SUBSTANTIAL MODIFICATIONS TO THE NATURE, EXTENT, AND CONTENT OF THE TREATIES; THEREFORE, THE CONTENT AND NATURE OF THE AMENDMENTS TO BE INTRODUCED TO THE TREATIES MAY DETERMINE, TO AN IMPORTANT EXTENT, THE NECESSITY FOR A NEW PLEBISCITE.

(3) ACCORDING TO PANAMANIAN LAW, THE INTERPRETATION OF THIS LEGAL PROBLEM CAN BE CONSIDERED AN ATTRIBUTE OF THE EXECUTIVE, WHICH IS IN CHARGE OF THE CONDUCT OF FOREIGN RELATIONS, BUT THE NATIONAL ASSEMBLY OF MUNICIPAL REPRESENTATIVES COULD CONSIDER THE PROBLEM WHILE PASSING THE TREATIES AS A LAW. ALSO, THE SUPREME

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COURT COULD EVENTUALLY BE ASKED TO RULE ABOUT THE LEGALITY OF THE TREATIES AND THEIR FORMAL APPROVAL IS AN IMPORTANT ELEMENT OF THE CASE (FOOTNOTE 4: ART. 188 OF THE 1972 PANAMANIAN CONSTITUTION ENTRUSTS THE SUPREME COURT WITH SEVERAL FUNCTIONS, AMONG WHICH IS THE FOLLOWING: "1. GUARDIANSHIP OF THE INTEGRITY OF THE CONSTITUTION, TO WHICH END IT SHALL DECIDE,

AFTER HEARING THE ATTORNEY GENERAL OF THE REPUBLIC
OR THE SOLICITOR GENERAL, ON THE CONSTITUTIONALITY
OF LAWS, DECREES, DECISIONS, RESOLUTIONS AND OTHER
ACTS CHALLENGED BEFORE IT BY ANY PERSON ON THE GROUNDS

OF CONTENT OR FORM." BASED ON SIMILAR PROVISIONS OF
PAST CONSTITUTIONS THE SUPREME COURT HAS RULED ON
THE CONSTITUTIONALITY OF LAWS AND DECREES APPROVING
TREATIES. FOR EXAMPLE: JUDGMENTS 1/63 OF JAN. 22,
1963, AND 12/63 OF JULY 29, 1963, IN 1 JURISPRUDENCIA
CONSTITUCIONAL 424-26, 438-39 (UNIVERSIDAD DE PANAMA,
SECTION DE INVESTIGACION JURIDICA, PANAMA CITY, 1967).)

(PREPARED BY EDUARDO ABBOTT, LEGAL SPECIALIST,
HISPANIC LAW DIVISION, LAW LIBRARY, LIBRARY OF
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